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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/881,490	06/14/2001	Roger G. Little II	11021US07 / 100-238.C3	1110

7590 02/12/2003

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EXAMINER
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ROBINSON, HOPE A

ART UNIT	PAPER NUMBER
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1653

DATE MAILED: 02/12/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
09/881,490

Applicant(s)  
Little II et al.

Examiner  
HOPE ROBINSON

Art Unit  
1653

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Oct 18, 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claims 1-21 are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 6) ☐ Other:

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Restriction to one of the following inventions is required under  
35 U.S.C. 121:

I. Claims 1-15 are drawn to an antifungal peptide having the sequence  
LIQL, IQLF, WLIQL, LIQLF, SLIQLF or a sequence set forth in SEQ ID  
5 NOS: 118-137 etc., from which an election of one sequence is  
required, classified in class 530, subclass 350.

II. Claim 16 is drawn to an in vitro method for killing or inhibiting  
replication of fungi, classified in class 435, subclass 254.1.

10 III. Claims 17-21 are drawn to a method of treating fungal infections,  
classified in class 514, subclass 2.

The inventions are distinct, each from the other because of the  
15 following reasons:

Group I encompasses several patentably distinct inventions as the claims  
consists of different peptides, having different structure, thus different  
properties and function.

The inventions Group I, II and III are related as product and processes  
20 of use. The inventions can be shown to be distinct if either or both of the  
following can be shown: (1) the process for using the product as claimed can  
be practiced with another materially different product or (2) the product as  
claimed can be used in a materially different process of using that product  
(MPEP § 806.05(h)). In the instant case the products of Group I can be used  
25 in a materially different process of using the products for example to make  
antibodies for assays.

Groups II and III are patentably distinct because the methods have  
different method steps and end point. For example the method of Group II is

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directed to killing the replication of fungi, whereas the method of Group III is directed to treating fungal infections.

5 Furthermore, the inventions have acquired a separate status in the art as a separate subject for inventive effect and require independent searches. The search for each of the above inventions is not co-extensive particularly with regard to the literature search. A reference which would anticipate the invention of one group would not necessarily anticipate or make obvious the other group. Moreover, as to the question of burden of search, classification  
10 of subject matter is merely one indication of the burdensome nature of the search involved. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification and because of their recognized divergent subject matter, election of a single group for examination purposes as indicated is  
15 proper.

A telephone call was made to Ms. Janet McNicholas on February 7, 2003 to request an oral election to the above requirement, but did not result in an election being made.

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Applicant is advised that the response to this election requirement to be complete must include an election of the invention to be examined even though the requirement be traversed.

Applicant is reminded that upon the cancellation of claims to a non-  
25 elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the

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fee required under 37 CFR 1.17(I).

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Hope A. Robinson whose telephone number is (703)308-6231. The Examiner can normally be reached on Monday - Friday from 9:00 A.M. to 5:30 P.M. (EST).

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor Christopher S.F. Low, can be reached at (703)308-2923.

Any inquiries of a general nature relating to this application should be directed to the Group Receptionist whose telephone number is (703)308-0196.

Papers related to this application may be submitted by facsimile transmission. The official fax phone number for Technology Center 1600 is (703) 308-4242. Please affix the Examiner's name on a cover sheet attached to your communication should you choose to fax your response. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG (November 15, 1989).

Hope A. Robinson, MS 

Patent Examiner



CHRISTOPHER S. F. LOW  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600